

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal No. 4:09-cr-076
	)	
-vs-	)	
	)	
MICHAEL HOWARD REED,	)	
	)	
Defendant.	)	

UNITED STATES' REQUESTED JURY INSTRUCTIONS

United States v. Reed, Crim. No. 4:09-cr-076

UNITED STATES' REQUESTED JURY INSTRUCTION NO. 1

On or About: Explained

The indictment charges that the offense was committed "on or about" a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 2

Essential Elements: Possession of a Firearm or Ammunition by Fugitive From Justice.

The crime of possession of a firearm by a fugitive from justice, as charged in the indictment, has three essential elements, which are:

*One*, Reed was a fugitive from justice;

*Two*, while he was a fugitive from justice, Reed knowingly possessed a firearm or ammunition -- a Desert Eagle 9 mm handgun; or 9 mm ammunition; and

*Three*, the firearm or ammunition was transported across a state line at some time during or before Reed's possession of it.

With respect to Element Two, you only have to find that Reed possessed one of the items, either the firearm or ammunition. You may find he possessed both. You must be unanimous in which item or items he possessed.

If you find these three elements unanimously and beyond a reasonable doubt, then you must find Reed guilty of the crime of possession of a firearm or ammunition by a fugitive from justice.

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 3

Fugitive From Justice: Defined

The phrase “fugitive from justice” means any person who has fled from any State to avoid prosecution for a crime. This definition is satisfied if you find (1) the defendant knew charges were pending against him, (2) the defendant refused to answer those charges, and (3) the defendant left the jurisdiction where the charges were pending. It is not necessary that the defendant left the jurisdiction with the intent to avoid the charges pending against him. A defendant does not have to know he was termed a “fugitive.”

Title 18, United States Code, Section 921(a)(15).

United States v. Ballentine, 4 F.3d 504, 506 (7th Cir. 1993).

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 4

Firearm: Defined.

The term "firearm" means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 5

Possession: Defined.

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 6

Firearm or Ammunition Transported Across a State Line.

If you have found beyond a reasonable doubt that the firearm or ammunition in question was manufactured in a state other than North Dakota and that the defendant possessed that firearm or ammunition in the State of North Dakota then you may, but are not required to, find that it was transported across a state line

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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 7

Intent or Knowledge: Explained

Intent and knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent.



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UNITED STATES' REQUESTED JURY INSTRUCTION NO. 8

Transcript of Audio Recording.

As you have heard, there is a typewritten transcript of the audio recording you are about to hear. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you keep track of the speakers. Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the audio recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Manual of Model Criminal Jury Instructions for the Eighth Circuit, § 2.06A (2009 ed.).

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,	)	
	)	Criminal No. 4:09-cr-76
Plaintiff,	)	
	)	<u>CERTIFICATE OF SERVICE</u>
v.	)	
	)	
MICHAEL HOWARD REED,	)	
	)	
Defendant.	)	

I hereby certify that on January 15, 2010, the following documents:

United States' Requested Jury Instructions

were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

Orell D. Schmitz

I further certify that a copy of the foregoing documents will be mailed by first class mail, postage paid, to the following non-ECF participants:

Michael Howard Reed  
HACTC  
110 Industrial Road  
Rugby, ND 58368

Dated: January 15, 2010

/s/ \_\_\_\_\_  
RENITA A. BERGER  
Office of United States Attorney